

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH RANDALL FITZGERALD,

Defendant-Appellant.

UNPUBLISHED

May 9, 2006

No. 260548

Wayne Circuit Court

LC No. 04-011211-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of larceny by conversion of property valued at \$1,000 or more but less than \$20,000, MCL 750.362, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contracted with complainant to perform work on her home and accepted payment in the amount of \$5,953, but never performed the work. Complainant and defendant executed a contract that provided that the work was to be completed by August 25, 2003. The parties also executed a change order that indicated that the start and completion dates for the work were to be left open.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the trial court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). A trial court's findings of fact are reviewed for clear error. MCR 2.613(C). A finding is considered to be clearly erroneous if, after a review of the entire record, we are left with the firm and definite conviction that a mistake was made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of larceny by conversion are: (1) the property at issue had some value; (2) the property belonged to someone other than the defendant; (3) someone delivered the property to the defendant; (4) the defendant embezzled, converted to his own use, or hid the property with the intent to embezzle or fraudulently use it; and (5) at the time the property was embezzled, converted, or hidden, the defendant intended to defraud or cheat the owner permanently of the property. *People v Mason*, 247 Mich App 64, 72; 634 NW2d 382 (2001). Larceny by conversion is a specific intent crime. Minimal circumstantial evidence on the issue of intent is sufficient to prove state of mind. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

Defendant argues that his conviction of larceny must be reversed because insufficient evidence was produced to establish that he intended to deprive complainant permanently of her money.¹ We disagree and affirm. The original contract specified that the work was to be completed by August 25, 2003. The change order left the completion date open; however, the order also stated that the terms and conditions specified in the original contract continued to apply and contemplated that the work would be performed. Defendant deposited complainant's check into his business account, but thereafter failed to contact complainant, perform work on her home, or refund the money. The trial court was entitled to infer that because defendant failed to contact complainant or refund the money for more than one year after receiving the funds, he intended to deprive her of the money permanently. *Fetterley, supra*. The prosecution was not required to prove that defendant's failure to refund the money was not simply a result of inefficient business practices. It is sufficient if the prosecution proves its own theory beyond a reasonable doubt; it is not necessary for the prosecution to disprove every reasonable theory of innocence. *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002).

The evidence produced at trial was sufficient to prove the elements of larceny of property valued at \$1,000 or more but less than \$20,000 beyond a reasonable doubt. *Mason, supra*; *Fetterley, supra*.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

¹ Defendant does not challenge his conviction of performing an occupation without a license, MCL 339.601.